## BEFORE

## THE PUBLIC SERVICE COMMISSION OF

## SOUTH CAROLINA

DOCKET NO. 94-712-C - ORDER NO. 95-1176  $\nu$ 

MAY 31, 1995

IN RE: Application of American ) ORDER GRANTING Communications Services, Inc. ) MOTION IN LIMINE for Certificates of Public ) Convenience and Necessity. )

This matter comes before the Public Service Commission of South Carolina (the Commission) on the May 24, 1995 Motion in Limine filed by American Communications Services, Inc. (ACSI).

ACSI seeks an Order in Limine excluding the pre-filed testimony of David B. Denton, filed on behalf of Southern Bell Telephone and Telegraph Company (Southern Bell) in this Docket.

Southern Bell filed, on May 6, 1995, the testimony of Mr.

David B. Denton, consisting of eight pages. According to ACSI, this testimony proports to offer legal opinions of evidence which is designed to instruct the Commission on the legal issues of statutory interpretations in this matter. ACSI states its belief that Southern Bell should be prohibited from introducing witness Denton's testimony at the hearing. ACSI states that Denton is not a member of the Bar Association nor does he list any training which would qualify him as an expert in the law. ACSI states that, since the content and clear purpose of the testimony is to share with the Commission the opinions of witness Denton as to statutory interpretation and certain other matters that relate solely to the application of the law in the Docket, the Applicant ACSI contends

that these portions of the testimony should be excluded. ACSI states authority for the proposition that the law in South Carolina is absolutely clear that opinion evidence may be rendered as to facts and issues, but that testimony which consists of conclusions of law is inadmissible. See O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E.2d 734 (1978).

Southern Bell has filed a response and states that the parties recognize that this Application at bar presents many complex issues of first impression in this State to this Commission, and that Denton's testimony is an attempt to present public policy concerns which Southern Bell believes that ACSI's Application presents to the Commission.

The Commission has examined this matter and holds that ACSI's Motion in Limine should be granted. We believe that the testimony of David B. Denton offers legal opinions on evidence. This may not be done under O'Quinn v. Beach Associates, supra. We therefore hold that Denton's testimony as it stands may not be presented to the Commission and is hereby excluded from the hearing. We believe

that the language and information in that testimony is more properly presented in a Brief. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

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ATTEST:

DeputyExecutive Director

(SEAL)